

REMARKS

In the present Amendment, claims 1, 9, 16, 19, 23-27, 31-32 and 37-47 are amended. Claims 3-8, 10, 13-15, 17-18, 20, 28-30, 34 and 36 are in their original form. Claims 2, 12 and 33 are unchanged from the previous response filed on July 19, 2007. Claims 11, 21-22 and 35 were previously cancelled in Corrected Preliminary Amendment filed January 6, 2005. The listing of claims reflects all amendments made to claims 1-2, 9, 12, 16, 19, 23-27, 31-33 and 37-47 with respect to the original patent claims.

Examiner's Interview

On April 28, 2009, Applicants' representative conducted a Telephonic Interview with Examiner Simone. Applicants appreciate the Examiner's time and consideration during the Interview. During the Interview, Applicants' representative and the Examiner discussed the requirements of the reissue oath/declaration and the language set forth in the Office action. The Examiner agreed that the reissue oath/declaration is not required to identify all changes made to the claims upon which to support that reissue application, as required in the Office action. Rather, as provided in the Examiner's Interview Summary, the reissue oath/declaration must identify "at least one error being relied upon as a basis for the reissue application" and state that "all errors being corrected in the reissue application up to the time of filing of the oath or declaration arose without any deceptive intention on the part of the applicant". 37 C.F.R. 1.175; MPEP 1414.

Oath/Declaration

In the present Office action, the reissue oath/declaration was considered defective because it fails to identify all changes made in the claims upon which to support the reissue application. As mentioned above, the Examiner agreed that such language is not required in a reissue oath/declaration. Accordingly, Applicants respectfully submit that the rejection should be withdrawn.

To facilitate allowance of the present application, Applicants submit herewith the Third Supplemental Declaration by the Assignee for Reissue Patent Application (the "Third Supplemental Declaration"). The Third Supplemental Declaration provides the following:

At least one error upon which reissue is based is described as follows:

It is believed that the scope of the broadest independent claim is too broad in view of the prior art, it is believed that certain further features could have and should have been claimed in both independent and dependent form to better clarify the scope of the invention and further distinguish the invention from the prior art. These errors were discovered during a review of the patent in light of potential litigation.

One error being relied upon as a basis for reissue is the word "orifice" which rendered claim 1 too broad in view of the prior art and it is believed that certain further features could have and should have been claimed as done so in amended claim 1.

All errors which are being corrected in the present reissue application up to time of signing of this oath/declaration arose without any deceptive intention on the part of the applicant.

Third Supplemental Declaration, page 1. As agreed to during the Interview, this language meets the requirements for the reissue oath/declaration. See 37 C.F.R. 1.175(a)(1), (2); MPEP 1414.

As the Third Supplemental Declaration is a supplemental oath/declaration, the Third Supplemental Declaration also provides the following:

Every error in the patent which was corrected in the present reissue application, and which is not covered by the prior oath(s) and/or declaration submitted in this application arose without any deceptive intention on the part of the applicant.

Third Supplemental Declaration, page 2. See MPEP 1414.01.

In view of the foregoing, Applicants respectfully submit that the Third Supplemental Declaration meets all requirements for a reissue oath/declaration and for a supplemental reissue oath/declaration. Applicants respectfully submit that the rejection to the reissue oath/declaration should be withdrawn.

Claim Rejections - 35 U.S.C. § 251

The Examiner rejected claims 1-10, 12-20, 23-34, and 36-47 under 35 U.S.C. § 251, as being based upon a defective reissue oath/declaration. As discussed above, Applicants respectfully submit that the newly submitted Third Supplemental Declaration meets all requirements for a reissue oath/declaration. Accordingly, the rejection of the claims under 35 U.S.C. § 251, as being based upon a defective reissue oath/declaration, should be withdrawn.

The Examiner also rejected claims 1-10, 12-20, 23-34 and 36-47 under 35 U.S.C. § 251, as being improperly broadened. Claims 1, 9, 16, 19, 23-27, 31-32 and 37-47 have been amended so that each claim is no broader than issued patent claim 1, the sole independent claim from U.S. Patent No. 6,234,066. Accordingly, Applicants respectfully request withdrawal of the rejection of the claims under 35 U.S.C. § 251, as being improperly broadened.

Support for Changes Made to the Claims

In addition to the support identified in the previous responses, claims 1, 9, 16, 19, 23-27, 31-32 and 37-47 are amended to consistently use the term “food product-receiving chamber”, as provided in issued patent claim 1.

Claim 9, 16, 19, 23, 25-27 and 31-32 are each amended into independent form to include the language of issued patent claim 1 from which each depended. Claim 24 is amended into independent form to include the language of issued patent claims 1 and 21 from which it depended.

Claims 1, 9, 16, 19, 23-27, 31-32 are amended to remove the numbering of the paragraphs (e.g., “a)”, “1)”, etc.) which was confusing.

Claims 37-47 are each amended to include language of issued patent claim 1 such that each claim is no broader than issued patent claim 1.

CONCLUSION

In view of the above amendments and remarks, Applicants submit that the claims, as amended, are novel and patentable over the prior art, that all the rejections to the claims have been overcome, and that the application is in condition for allowance.

If additional consultation with Applicants' representative will further prosecution, the undersigned is available during normal business hours at the below-identified telephone number.

Respectfully submitted,

/Edward R. Lawson Jr./

Edward R. Lawson Jr.
Reg. No. 41,931

Docket No. 062108-9085-00
Michael Best & Friedrich LLP
100 East Wisconsin Avenue
Suite 3300
Milwaukee, Wisconsin 53202-4108
414.271.6560